
JEFFERSON COUNTY MEDIATION SERVICES
VOLUNTEER COLLOQUIUM MINUTES
November 20, 2012

Volunteers Present: Joel Bogen, Peggy Evans, Doug Head, Rita Hyland, Dave Jones, Joel Kioh, Georgine Kryda, Mary Mrozek, Elaine Rains, Ronnie Rosenbaum, Jerry Schopen, Doug Tabor, Scott Wylie

Staff Present: Mark Loye, Julie Carter, Helena Jo Goldstein

I. Welcome:

Mark Loye welcomed everyone to the meeting and asked those present to introduce themselves.

II. Program Status

- A. Statistics: JCMS is on pace for another record-breaking year. We currently expect to handle approximately 2,000 cases in 2012.
- B. Cases Available: Volunteers are notified of available cases by email. Please remember to confirm promptly receipt of newly assigned cases when you get the email from Mark – just click “reply” and say “got it.” If you wish to correspond about something else, please change the subject line of your email. The JCMS staff thanks you for remembering this big timesaver for us!
- C. Statistics: Case statistics for the last four quarters were attached to the agenda for the meeting.
- D. *New at the office* - If you come in for a scheduled mediation, there should be a folder for your case on the table opposite the giant wall calendar. On the cover sheet there will be information such as any upcoming court dates, which forms to use, etc. Leave the folder with all mediation paperwork (and any forms you did not use) in the blue box.
- E. Other Current Projects: Mr. Loye discussed current JCMS activities. JCMS is in the process of reorganizing staff responsibilities to better meet the demands of the growing caseload. In October a new volunteer orientation was held for 36 new volunteers. These new volunteers will add to our capacity to handle mediation cases. Mr. Loye intends to do additional marketing to obtain more non-domestic cases in 2013.

III. Presentation: Challenges in Mediation

A. How to get the most out of working with a co-mediator

Speaker: Julie Carter

From its inception, JCMS has used the co-mediation model. The hope was that experienced mediators would mentor inexperienced mediators, so that the program would always be creating its own future pool of experienced mediators. Co-mediators are not meant to be treated as secretaries; they are partners in the case. Even when an individual is new to JCMS, they may be an experienced mediator coming from a different forum. In addition, they may bring deep subject matter knowledge to the table. It is important for the mediators on a case to be in contact with each other before the mediation session so they can develop some rapport. This gives the lead mediator a chance to discover the co's level of comfort with mediation, and discuss the topics at issue in the particular case. When parties sense that the mediators are comfortable working together, it helps them relax and trust the process. De-briefing the case at the end of mediation can also provide valuable insights to both mediators.

It is important to contact your fellow mediator as soon as possible, to develop a plan to handle the case. If the mediators agree that one of them is going to do the initial contact with the parties, set a time to check in with each other. Sometimes a party may not return a call from one mediator, but is willing to call back the other mediator. (This can be an issue in domestic cases.) During the mediator check-in you can decide whether to have the other mediator try calling, or whether email might be a good bet. Also, the JCMS office can send a party a letter reminding them that they agreed to mediate, and that their mediator has left phone messages asking for a phone call.

At the start of the mediation session, most mediators take a few minutes to introduce themselves and their qualifications. Lawyers should be careful not to imply that they are bringing their legal expertise to the table. Mediators do not give legal advice. Lawyers need to be careful that any suggestions they may make are not actually their legal opinion about how the case should go, and that the parties understand that. Mediators should reassure the parties that they are well-trained, and that they donate their time to JCMS because they believe in the power of the mediation process. A number of volunteers feel that as soon as one mediator says he or she is a lawyer, the parties give them deference during the rest of the mediation, regardless of which mediator actually has more mediation or subject matter experience, or is the lead on the case. How to handle introductions is therefore an excellent topic to discuss with your fellow mediator as you discuss how you will handle the case.

Sometimes during a mediation session one mediator may disagree with the direction the other mediator is going. The proper way to handle this is through a mediator caucus. The parties should be separated before the mediators go somewhere private to discuss strategy or any concerns they may be developing about a party (developing volatility, agreeing too easily to everything the other party suggest, etc.). As mediators, we preach the value of communication. We should also be practicing it. A number of volunteers also feel that new mediators talk too much during the mediation, forgetting the meeting is not about them. This is something to handle in your pre-mediation discussions, or in a mediator caucus.

(The above summary incorporated many insightful comments made by colloquium attendees.)

B. Buyer's Remorse

Speaker: Mark Loye

Sometimes, the day after a mediation, one of the parties calls the JCMS office and says they are "taking back" their signature on the MOU. They may accuse the mediator of "forcing" them to sign, or say that "sleeping on it" made them realize it was a bad decision, or admit that someone at home told them the agreement was a bad idea. The office is faced with how to handle these situations. (If a party complains about a mediator, JCMS does contact the mediator to discuss the situation. These complaints are rare, and happen most often after long mediation sessions or after meetings that go into the late evening. In general, JCMS believes it is better to avoid marathon sessions.)

If there is a court case and the other party has left mediation with a stipulation to file in court, the answer is easy; there is nothing JCMS can do at that point. The unhappy party is going to have to try to disavow the agreement by taking action through the court system. Neighbor-neighbor cases present a very different situation. If the whole purpose of mediation was to resolve conflict between the neighbors, and one party is now saying the agreement will not work, JCMS often offers the parties more mediation. However, if the satisfied party says no, can JCMS still report back to the referring entity, perhaps a local police officer, that an agreement was reached?

Some mediators felt that mediation should include discussions about what the consequences will be for a breach of the agreement. Other felt bringing up this topic would be suggesting to the parties that one of them was not actually intending to keep the agreement. It would introduce an element of distrust just as the parties were building some trust through the agreement-making process. Others wondered whether a breach was really the same thing as throwing out the agreement altogether.

A number of mediators felt that JCMS should tell people, "you had an opportunity not to sign, but you chose to sign. JCMS has no power to un-sign the agreement for you. You will have to look at other ways to handle the situation." All JCMS can do is tell the referring entity (if there is one) that on this date an agreement was signed during mediation. This gets JCMS out of the middle.

There was a discussion of adding a disclaimer to the Agreement to Mediate. Proposed language: "After mediation has concluded, if either or both parties wish to revoke all or any part of the agreement reached through mediation, they should immediately notify all other parties to the agreement AND the Court in writing. Do not contact JCMS. With the exception of cases referred by Child Support Services, it is the sole responsibility of the parties to have any final agreement filed with the proper authorities. JCMS will not file any agreement resulting from mediation (Memorandum of Understanding or Stipulated Judgment) with the Court." Another proposal was to add a disclaimer to the

MOU form. Sample language: "This agreement is a written expression of your intent. JCMS does not file agreements with the court, nor can it undo your signature." Any such language change would have to be approved by the County Attorney.

(The above summary incorporated many insightful comments made by colloquium attendees.)

In all, the discussion provided much food for thought. JCMS staff is going to consider the feasibility of creating a one-size-fits-all response to the buyer's remorse problem. The possibility of adding language to the Agreement to Mediate or MOU form is one option that will be reviewed. JCMS appreciates the contribution the attendees made in exploring the nuances of the "remorse" dilemma.

Mr. Loye thanked everyone who attended for participating in the discussion, and wished them a good evening.

IV. **Next Colloquium: Tuesday, January 15, 2013, 6:00 – 8:00 p.m.** in the Open Space Hearing Room (Ponderosa Room). **Topic:** Donna Gibbs of Jeffco Child Support Services (CSS) will talk about Child Support Calculations in Colorado, as well as some rules specific to CSS.

The meeting was adjourned.

Submitted by: *Helena Jo Goldstein*
Helena Jo Goldstein, Programs Manager

Approved by: *Mark Loye*
Mark Loye, Director